

Town of Frye Island / Application for Park and Ride Facility L-25719-NA-B-N  
Request for Board Jurisdiction by The Friends of Raymond Cape

- Applicant's April 19, 2013 Letter Responding to Friends

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April 19, 2013

Robert A. Foley, Chair  
BOARD OF ENVIRONMENTAL PROTECTION  
Bureau of Land And Water Quality.  
17 State House Station  
Augusta, ME 04333-0017

Re: Commissioner's Decision: March 22, 2013;  
Town of Frye Island Cape Road & Quarry Road  
Map/Lot: 002/011 86070/006 Park & Ride For Ferry Landing  
MDEP File No. L-25719-NA-B-N

Dear Mr. Chairman:

We represent the Town of Fry Island ("Frye Island"). Frye Island had not previously been provided notice by the "Friends of Raymond Cape" of their original petition to the Department or of the appeal to the Board, it does wish to respond.

My client applied to the Standish Planning Board for Site Plan approval of a "park and ride" lot located on land in Raymond that Fry Island purchased in 2005, located near the ferry landing site owned by Frye Island, also located in Raymond that has served Frye Island for many years.

Frye Island was formerly a part of the Town of Standish and was created by the Maine legislature in 1997. In 2003 Frye Island acquired title to the ferry landing formerly owned by Frye Island Inc., the corporation that had previously administered the island's common facilities.

Property located in Frye Island can only be accessed by ferry or private boat.

Increasing problems with summer back-ups on Raymond Cape Road created by vehicles waiting to get on the ferry has lead Frye Island to apply for an off road parking area on the land it owned in Raymond.

While the Board can address its own procedures as to whether it should agree to take over the proceeding before the Raymond Planning Board based on allegations that the matter is one of

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"state wide significance," the substantive issue raised by the petitions as to a Maine municipality can own real estate in another town has been addressed by Frye Island in a Memorandum of Law previously submitted to the Planning Board, a copy of which is enclosed.

That Memo succinctly rebuts the supposed question regarding Frye Island's authority to own land in another town. For example as noted in the Memo, anyone who has flown from the Portland Jetport has benefitted from the City of Portland's ownership of land located in the City of South Portland.

Moreover the legal issue of the scope of a Maine municipalities legal authority to own land would seem to be well outside of the scope of the Department's and the Board's jurisdiction.

The Maine Supreme Judicial Court has repeatedly held that administrative boards are not to determine land ownership issues, which is a matter for the courts. See Southridge Corp. v. Board of Environmental Protection, 655 A.2d 345, 348 (Me. 1995) in which a mere claim by adverse possession was deemed sufficient "right, title and interest." Here Mr. Chute's own appeal cites the recorded deeds pursuant to which Frye Island owns the land in question.

In summary there is no basis for the Board to assume jurisdiction.

Respectfully submitted,



Lawrence R. Clough

cc Patrica Aho, Commissioner  
Christine Woodruff, Maine DEP - Portland  
Wayne Fournier, Town Manager  
Mary Costigan, Esq. (Town of Raymond)  
Town Planner, Town of Raymond  
Stephean C. Chute, Esq.

**JENSEN BAIRD  
GARDNER HENRY***Attorneys at Law***MEMORANDUM**

**TO:** Wayne Fournier, Town Manager  
**FROM:** William Dale, Esq. and Lawrence Clough, Esq.  
**RE:** Frye Island's Ownership or Control of Real Property Off Island  
**DATE:** February 13, 2013

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**A. Introduction**

This memorandum is submitted in response to the issue raised in a legal memo dated February 13, 2013 from the attorney for the Friends of Raymond Cape and submitted to the Raymond Planning Board in connection with the Town of Frye Island's application for site plan approval for a "park and ride" lot in Raymond. In particular, the legal memo argues that the Town lacks the legal authority to own or to lease real property not located on Frye Island.

The Maine law allowing municipalities to own real estate outside their boundaries is well established and clearly to the contrary. Moreover the State statutes cited in the legal memo are totally inapposite.

**B. State Law Background**

Under current law, Maine municipalities have all but unlimited authority to conduct any business or exercise any power not otherwise expressly prohibited by the Maine Constitution or the general laws (the statutes and case law) of Maine. See Maine Constitution, Art. VIII.

Further, the municipal "home rule" statute, 30-A M.R.S.A. § 3001, is an "independent and plenary grant of authority" to Maine municipalities beyond the home rule authority granted by the Maine Constitution. See *School Committee of Town of York v. Town of York*, 626 A.2d 935 (Me. 1993).

Nothing in the general laws of Maine prohibits a municipality from owning or having the authority to enter into long term leases for real property lying outside its corporate limits.

The statutes cited by the legal memo are not applicable. First, on page 2 of the legal memo in question, use of the term "public property" in the legislation creating the Town is referenced to a State statute regarding real property tax exemption, which merely provides that real property owned by a municipality and located outside of its corporate

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limits is not exempt from taxation. Not only has this statute been taken out of context by the legal memo, but, if anything it proves the opposite, namely, that the Legislature recognized that towns may own property outside their own boundaries and that when they do so they are subject to taxation on that land.

Second, on pages 5 and 6, the legal memo also takes out of context another State statute, the Revenue Producing Municipal Facilities Act, 30-A M.R.S.A. §§ 5401--5415, applicable only to large scale municipal revenue producing projects such as airports and waste water control plants that was enacted to allow municipalities to issue revenue obligation bonds, as opposed to general obligation bonds, to finance such facilities. Nothing in that statute purports to apply generally outside the context of such bond financing.

### C. Frye Island Town Charter

Conspicuous by its absence is any substantive review of the Town of Frye Island's own Charter which in several instances expressly contemplates Frye Island facilities may be located off island.

First, in the preamble, the home rule provisions of the Maine Constitution and the municipal home rule statute are both cited with a reference to their being "liberally construed" to provide the Town with broad corporate powers. See also Art. I, Sec. 3 ("liberal" construction of corporate powers intended). These two provisions have already been discussed above.

Second, in Art. III, Sec. 7, the Town's Charter provides that Selectmen meetings will all be held off island from November through April. Surely, if the municipal officers may meet off island, the Town ought to be able to own off island land. Similarly, Art. V, Sec. 4 allows the Town Manager and the corporate offices to be located off island for the months of November through April.

And third, Art. VIII, Sec. 1, provides for the operation of a ferry boat over to the Raymond mainland. Again, this necessarily includes off island real estate. Since 2003 the Town has owned the ferry landing site located on Raymond Cape (See Cumberland County Registry of Deeds Book 20471, Page 265).

### D. Other Notable Examples

And if the above is not persuasive enough, please note that there are numerous instances around the State of Maine where municipalities own land outside of their corporate limits with no express authority.

For example, a large portion of the Portland Jetport's main runway is located in South Portland. Similarly, a portion of the City of Bangor's airport runway is located in

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Herman. Portland's very large Evergreen Cemetery is located in the City of South Portland.

**E. Conclusion**

There is simply no prohibition under the general laws of the State of Maine or the Frye Island Town Charter that bars the Town from owning real property outside its corporate limits.<sup>1</sup>

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<sup>1</sup> Further, even if there were any question on this point, and there is not, the Maine Law Court has held repeatedly that local administrative boards are not to referee real estate title issues; that is left to the exclusive jurisdiction of the courts.